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RICHMOND ICE CO. v. CRYSTAL ICE CO.

January 26, 1905.

[49 S. E. 650.]

LANDLORD AND TENANT—DESTRUCTION OF BUILDINGS—LIABILITY FOR RENT—
STATUTE—JURY QUESTION—INSTRUCTION—ARGUMENT OF COUNSEL—RE-
MARK OF COURT—ERROR.

1. In an action for rent error cannot be based on the cross-examination of one of defendant's witnesses over the objection that the lease was in writing, and could not be contradicted or varied by parol, where the cross-examination was not as to the contents of the lease, but as to the purpose for which defendant had leased the premises.

2. Where, in an action for rent, there was evidence that the premises were rented merely to get an objectionable competitor of defendant out of business, counsel for plaintiff had a right to comment thereon in argument, though the testimony of a witness to show such fact had been excluded.

3. Where there was evidence as to what purpose the premises were rented for, but the testimony of a witness to show such fact had been excluded by the court, there was no error prejudicial to defendant in the court stating that the evidence was improperly excluded, when objection was made by defendant to a comment on such fact by counsel for plaintiff in argument to the jury.

4. Under the direct provisions of Code 1887, sec. 2455 [Va. Code 1904, p. 1207], the reduction in rent to which the tenant is entitled on the destruction of leased buildings without his fault is the diminished value of the leased premises to the tenant for his purposes.

5. Charges requested, which are covered by the instructions given, are properly refused.

6. In an action for rent, where the tenant relied on Code 1887, sec. 2455 [Va. Code 1904, p. 1207], providing that in case of the destruction of leased buildings without fault on the part of the tenant he shall be entitled to a reduction in rent equal to the diminished value of the leased premises for his purposes, and the evidence showed that the premises had been rented to keep a competitor from using them, it sustained a finding that the value of the leased premises for the tenant's purposes had not been diminished during the period in which the rent demanded accrued.

STULTZ v. PRATT.

February 2, 1905.

[49 S. E. 654.]

QUO WARRANTO—RETURN OF WRIT—RETURN TO SPECIAL TERM—STATUTES.

Va. Code 1904, p. 1633, sec. 3060, provides, in section 3062, that there may be tried at special term any civil case not tried at the last preceding term, any motion cognizable by the court, any criminal case which could be tried at a regular term, and any controversy ready for hearing at law or in chancery, though it

could not have been heard at the preceding term; and section 3024, p. 1612, provides that, where the reasons stated in a petition for *quo warranto* are legally sufficient, the writ shall be returnable to the next term of the court. *Held*, that a writ of *quo warranto* may not be returned to a special term, the phrase "next term" in section 3024 referring to a regular term, and the matter not being within section 3062.

KLOSS v. COMMONWEALTH.

January 26, 1905.

[49 S. E. 655.]

PEDDLERS—TAKING ORDERS BY SAMPLES—CONSTRUCTION OF STATUTE.

1. A traveling salesman, who carries samples and takes orders for brooms from merchants in lots of a dozen or more, and afterwards delivers the brooms, which are shipped to him from the factory, is not a peddler requiring a license, within Act April 16, 1903, sec. 50, as amended May 13, 1903 (Va. Code 1904, pp. 2223-2224), defining as such all persons who carry goods from place to place for sale, and all persons who offer goods for sale without having a regular place of business.

2. A revenue law requiring peddlers to obtain a license, being penal in so far as it imposes a penalty for a violation of its provisions, must be strictly construed.

GLOBE FURNITURE CO. v. TRUSTEES OF JERUSALEM BAPTIST CHURCH.

February 2, 1905.

[49 S. E. 657.]

RELIGIOUS SOCIETIES—CONTRACTS BY TRUSTEES—JUDGMENT—LIEN.

Va. Code 1904, p. 773, sec. 1398, validates conveyances for the use of any religious congregation as a place of worship, and provides that the land shall be held for no other purpose. Section 1399, p. 774, provides for the appointment of trustees, on application of the congregation, to effect the purpose of a conveyance, and that the legal title shall vest in the trustees. Section 1405, p. 776, provides that a congregation may sell or incumber church property, the proceeds to be disposed of as the congregation may wish; and section 1406 provides that the trustees may effect an incumbrance on or a sale of such real estate, on the wish of the congregation, the court to make an order for proper reinvestment of the proceeds; and by section 1402, p. 775, the trustees may sue in their own name to recover any land, and be sued in relation to the same. *Held*, that the trustees have no power of their own volition to alien or incumber the real estate, and a judgment against the trustees of a church for the price of pews purchased by them for the church was binding on the trustees individually, but not on the real estate, or the proceeds of a sale thereof.